Supreme Court, U.S.
FILED

No. (1)

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In The

Supreme Court of the United States

October Term 1998

OCIE L. PACE SR., LARRY D. SIMPSON, RUBY J. PACE
Petitioners

(Pro se litigants)
VS.
MORTGAGE INVESTORS, INC.
Respondents

On Petition for Writ of Certiorari
United States Court of Appeals for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

OCIE L. PACE, SR.
LARRY D. SIMPSON
RUBY J. PACE
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Booker Hgts
Mulga, Ala 35118
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18pp

QUESTIONS PRESENTED

(1.) Where Respondents, Mortgage Investors, has through the filing of their complaint, in Ala. Circuit Court, clearly has violated the State of Ala. Procedural Laws. (set by statue) can and does the 30 (thirty) day rule apply, where Respondents has violated and not complied with State Law? Never invoking the Statue, nor establishing jurisdiction of the Court.

(2.) Whether the U.S. Court of Appeals errored in deciding that said Appeals Court, did not have jurisdiction over said matter, where there are federal/ and Constitutional questions to be resolved? Issues that can stand alone and cannot be resolved in State Court, creating a Pendent Jurisdiction (See U.S. Title 28§1376).

(3.) Whether the case Stage Door Development, Inc. v Broadcast music, Inc. 698 So. 2nd 787 Ala. Civ. App. 1997, is unconstitutional on its face?

(4.) Can a party having a proprietary interest, have the right, to negotiate and confirm a contract but not have the right to defend said contract?

(5.) Can a party loose it's property rights, because they are not apart of a specific bar association?

(6.) Can a judicial system (state), arbitrarily allow a party to defend it's property rights in one court, but not in another court? Due to the ruling of Stage Door Development, Inc. v Broadcast Music, Inc.

(7.) Can Respondents obtain legal possession of property, listed on their complaint, where Petitioners nor Respondents have no legal interest therein?

(8.) Can and does the 30 day rule apply, where respondents has committed fraud against petitioners.

LIST OF PARTIES

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgement is the subject of this petition is as follows:

(1.) Frank Galloway III
11 Oak Street
Birmingham, AL 35213

(2.) James W. Davis
1211 28th Street So.
Birmingham, AL 35205

(3.) Phil Corley
1211 28th Street So.
Birmingham, AL 35205

(4.) Alan C. Keith
3525 Lorna Ridge Drive, Suite 110
Birmingham, AL 35216

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TABLE OF AUTHORITIES

CASES CITED

(1.) Alabama Rules of Civil Procedure (12-11-30) Karrh v Crawford Inc., 468 So. 2nd 175 (Ala. Civ. App. 1985)

(2.) Stage Door Development, Inc. v Broadcast Music, Inc. 698 So. 2nd 787 Civ. App. 1997

(3.) Ala. Rules of Civil Procedure (12-11-31)

OPINIONS BELOW

Petitioners respectfully prays that a writ of certiorari issue to review the judgement below:

For cases from federal courts:

The opinion of the United States Court of Appeals appears at Appendix A. to the petition and is published.

The opinion of the United States District Court appears at Appendix B. to the petition and is published.

The opinion of the United States District Court for reconsideration, appears at Appendix C, to the petition and is published.

The Statue of the Ala. Rule of Civil Procedure § 12-11-30 appears at Appendix D. to the petition.

The case Stage Door Development, Inc. v Broadcast Music, Inc. appears at Appendix E. to the petition.

The Statute of Ala. Rule of Civil Procedure 12-11-31 appears at Appendix F. to the petition.

STATEMENT OF THE JURISDICTION

The Judgement of the Eleventh Circuit was entered on January 26, 1999. This Court has jurisdictions under 28 U.S.C. § 1254 (1).

Jurisdiction of the Eleventh Circuit was proper pursuant to the Removal Statute 1446 C, Truth and Lending Act, and Title U.S.C. 28 § 1367 Supplemental Jurisdiction (Pendent).

CONSTITUTIONAL PROVISIONS AND STATUTES

FEDERAL

(1.) Truth and Lending Act. Title 15-1601; Title 15-1641 Sec., 15-1692 Subchapter V. Debt Collection Practices; 15-1692 and Title 28-1441 note 119.

(2.) 14th Amendment of the U.S. Constitution.

(3.) Supplemental Jurisdiction Title U.S.C. 28 § 1367

STATE

(1.) Ala. Rules of Civil Procedure (12-11-30).

(2.) Ala. Rules of Civil Procedure (12-11-31).

STATEMENT OF THE CASE

The fundamental questions is whether the 30 day rule (pursuant to 28 U.S.C. 1446 (b)), regarding a removal request by Petitioners. Can the 30 day rule apply, where Respondents have violated, and not complied with the State of Alabama Court filing procedure laws. Never invoking the Statute, nor establishing jurisdiction of the State Circuit Court, and whether the U.S. Court of Appeals Eleventh Circuit, did not have jurisdiction, where there are federal and constitutional questions, (The case Stage Door Development and Truth and lending violation), to be resolved, that cannot be adjudicated in State Court, thus creating a "Pendent" jurisdiction. Congress cites here a special remand problem, that can arise, involving the doctrine of Supplemental Jurisdiction (Pendent)

REASONS FOR GRANTING THE WRIT

Petitioner believes that the Writ of Certiorari should be granted for the following reasons:

(1.) Not granting the Writ shall result in irreparable harm to Petitioner

(2.) Not granting the Writ shall result in unjust enrichment for Respondent. Where Respondents has clearly violated the Truth and

Lending Laws, and has committed fraud against said Petitioners.

(3.) Legitimate Federal and Constitutional issues, that cannot legally be adjudicated in State Court, shall not be abjudicated.

(4.) The denial shall result in Petitioners being denied Due Process and Equal Protection under the law.

(5.) A ruling that tends to be unconstitutional on its face (Stage Door Development, Inc. v Broadcast Music, Inc.) shall be allowed to stand.

(6.) The Stage Door Development case, shall have a chilling affect on contractual relations, and shall interfere with Interstate Commerce.

(7.) The doctrine of Pendent jurisdiction, set by congress, shall not be considered by said court, where the 30 day rule, as determined by congress, should be set aside.

CONCLUSION

The Petitioners for a Writ of Ceriorari should be granted.

Respectfully Submitted,

Ocie L. Pace

Ocie L. Pace

Larry D. Simpson

Larry D. Simpson

Ruby J. Pace

Ruby J. Pace

APPENDIX A.

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 98-6465

MORTGAGE INVESTORS, INC.,

Plaintiff - Appellee

versus

RUBY J. PACE

Defendent - Appellant

Appeal from the United States District

Court for the Northern District of Alabama

Before T. Joflat, Edmondson and Dubina, Circuit Judges, by the Court

This appeal is Dismissed for lack of jurisdiction. The district court's May 29, 1998, remand order was based upon the district court's determination that "this action was removed in excess of 30 days after the defendants received a copy of the complaint." Accordingly, the order is not reviewable by appeal or otherwise. See 28 U.S.C. § 1447 (d); Things Remembered, Inc. v. Petrarca, 516 U.S.C. 124, 124, 116 S. Ct. 494, 495, 133 L. Ed. 2nd. 461 (1995), Thermtron Products, Inc. v. Hermansdofer, 423 U.S.C. 336, 96, S. Ct. 584, 46 L. Ed. 2nd. 542 (1976); Ariail Drug Co., Inc. v. Recomm International Display, Inc., 122 F. 3d. 930, 933, (11th Cir. 1997)

APPENDIX B

In the United States District Court for the

Northern District of Alabama

Southern Division

Mortgage Investors, Inc.	)	
Plaintiff	)	Civil Action No. 98-G-1200-S
v	)	
Booker Heights Development Corp., Inc., Ruby J. Pace	)	Entered May 29, 1998
Defendent	)	

Remand Order

A review of the state court pleadings indicates that this action was removed in excess of 30 days after defendants receive a copy of the complaint. The motions to dismiss filed in state court by the defendants on February 19, 1999, demonstrate that the defendants had received a copy of the complaint. Accordingly, the action is due to be remanded pursuant to 28 U.S.C. § 1446 (b). See Michettie Pipe Stringing v. Murphy Bros., 125 F.3d 1396, 1398 (11th Cir. 1997) (Thirty-day removal period begins to run when defendant actually receives a copy of filed initial pleading by any means). Therefore, it is ordered, adjudged and decreed that this action be and it hereby is remanded to the state court from which it was removed.

Done and Ordered this 29th day of May 1998.

(s) J. Foy Guin Jr.

United States District Judge

J. Foy Guin, Jr.

Done and Ordered this 24th day of June 1998

APPENDIX C.

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA SOUTHERN DIVISION

Mortgage Investors, Inc.	)	
Plaintiff	)	Civil Action No. 98-G-1200-S
v	)	
Booker Heights Development Corp., Inc., Ruby J. Pace	)	Entered June 29, 1998
Defendant	)	

Order

This cause is before the court upon the motion of defendants to reconsider remand. Having considered the motion and applicable law, the court is of the opinion that it lacks jurisdiction to reconsider its remand order. (See First Union National Bank v Hall, 123 F. 3d 1374, 1377-78 (11th Cir. 1993) and cases cited therein) Accordingly, it is ordered, adjudged and decreed that the material attached to defendants' motion (including a pleading denominated "complaint"), the defendants' answer [Doc. #71], the defendants' motion to stay all proceeding [Doc #8], and the pleading style "Re: Request to stay all proceedings [Doc #9], he and they hereby are stricken; the action having been remanded prior to the filing of

those pleadings and those pleading having been filed on behalf of a corporation without legal counsel. It is

Further Ordered that Ocie L. Pace, Larry D. Simpson, and Ruby J. Pace be and they hereby are Enjoined from filing any further pleadings on behalf of Booker Heights Development Corp., Inc. in Civil Action No. 98-G-1200-S.

This action has been remanded and jurisdiction is exclusively with the state court in Civil Action No. 97-454. The Clerk is directed to deliver a copy of this to the Circuit Court of Jefferson County, Bessemer Divisions,

Done and Ordered this 24th day of June 1998

(s) J. Foy Guin Jr.

United States District Judge

J. Foy Guin, Jr.

APPENDIX D.

Article 2

Jurisdiction

§ 12-11-30

(1.) Civil-The circuit court shall have exclusive original jurisdiction of all civil actions in which the matter in controversy exceeds ten thousand dollars ($10,000), exclusive of interest and costs, and shall exercise original jurisdiction concurrent with district court in all civil action in which the matter in controversy exceeds one thousands five hundred dollars ($1,500), exclusive of interest and costs.

Amount in Controversy determined by amount asked for in complaint - The amount in controversy for the purposes of determining whether a case can be brought in Circuit Court is determined by the amount asked in the complaint. Karrh v Crawford - Sturgeons Ins., Inc., 468 So. 2nd 175 (Ala. Civ. App. 1985)

APPENDIX E.

Cite as 698 So. 2nd. 787 (Ala. Civ. 1999)

Stage Door Development, Inc.

v

Broadcast Music, Inc.

2960378

Court of Civil Appeals of Alabama

May 23, 1997

Following proceedings in the Dale Circuit Court, Charles L. Woods, Jr., sole stockholder of closely held corporation, who was not licensed to practice law, sought permission to represent appellant corporation on appeal. Although the Court of Civil Appeals denied request, stockholder filed brief on behalf of corporation. The Court of Civil Appeals, Crawley, J. held that appeal would be dismissed because Court, in essence, received no brief from appellant.

Appeal dismissed.

Robertson, P.J. filed dissenting opinion.

(1.) Attorney and Client 11 (2.1)

One who is not attorney may not appear as advocate on behalf of corporation, even one he wholly owns, without engaging in unauthorized practice of law. Code 1975, § 34-3-6 (b)(1).

APPENDIX F.

12-11-31 Equitable jurisdiction

(a) The district court shall, exercise exclusive jurisdiction over all civil actions in which the matter in controversy, exclusive of interest and costs, does not exceed $1,500. These actions shall be processed according to uniform rules of (simplified civil) procedures as may be promulgated by the Supreme Court.

(b) A party including an individual, partnership, or corporation, may appear in cases on the small claims docket of district court with or without representation by an attorney, the person representing the partnership shall be a partner or employee of the partnership, and provided further, that if a corporation appears without representation by an attorney, the person representing the corporation shall be an officer or full-time employee of the corporation.